IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2630 OF 2006
IN
SUIT NO.675 OF 1980

Cotton & Textile Trade Corporation ..Plaintiff

V/s.

The Sangli Bank Ltd. and others ..Defendants

Mr.Simil Purohit i/b. Dhru & Co. for the plaintiff
Mr.V.V.Kanade i/b. Dhruve Liladhar & Co. for defendant No.1

CORAM : S.A.BOBDE, J.

DATE : 31ST JANUARY, 2007

P.C.

1. This is an application for restoration of suit which was dismissed in default for non-appearance of the plaintiff on 17th March, 2006. The plaintiff's attorney's name was shown as "discharged". Hence, the clerk of the plaintiff did not bring the same to the plaintiff's attorney's notice. Therefore, the above suit was called out on 17th March, 2006 when no one appeared for the plaintiff. In these circumstances, the

learned Judge recorded that the plaintiff's counsel has taken discharge on 15th February, 1990.

2. In paragraph 6 of the affidavit in support, the plaintiff has stated that Mr.Dakshesh Dhruv who was attending the matter expired on 9th January, 2006. As a result, the plaintiff's attorney could not contact the plaintiff until the first week of April, 2006. The plaintiff has also filed an additional affidavit dated 31st January, 2007 that the plaintiff's Advocate learnt about the order dated 17th March, 2006 in the first week of July, 2006. Thereafter, the plaintiff caused search to be made. The plaintiff applied for a certified copy of the order dated 17th March, 2006 which was received on 20th April, 2006. After that the plaintiff has applied for restoration. The allegations in the affidavit in support are not controverted in the affidavit filed in reply. The learned counsel for the defendants opposes the plaintiff's application on the ground of

negligence. However, having regard to the circumstances explained by the plaintiff, there seems to be sufficient cause to set aside the order dated 17th March, 2006.

3. Notice of motion is allowed, however, subject to payment of costs in the sum of Rs.15,000/- to the defendants.

(S.A.BOBDE, J.)